

APPEAL NO. 040402
FILED APRIL 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on February 9, 2004. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of _____, does not extend to and include the cervical spine condition after (alleged date of injury); that the claimant did not sustain a compensable injury on (alleged date of injury); and that the claimant does not have disability resulting from an injury sustained on (alleged date of injury). The claimant appeals the hearing officer's determinations that he did not sustain a compensable injury on (alleged date of injury), and that he has not had disability as a result of that claimed injury, contending that the appealed determinations are not supported by the evidence. Respondent 1 (carrier 1), the workers' compensation insurance carrier for the claimed injury of (alleged date of injury), asserts that sufficient evidence supports the hearing officer's determinations on the appealed issues. No response was received from Respondent 2 (carrier 2), the workers' compensation insurance carrier for the _____, compensable injury. There is no appeal of the hearing officer's determination that the claimant's compensable injury of _____, does not extend to and include the cervical spine condition after (alleged date of injury), and that determination has become final under Section 410.169.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Based on the conflicting evidence adduced at the CCH, the hearing officer could certainly believe that an incident involving the claimant occurred at work on (alleged date of injury), but that the incident was not as described by the claimant and did not cause physical harm or damage to the claimant's body. The medical reports relied on by the claimant to prove that he sustained an injury recite his version of the incident, which was disputed by other testimony, and thus the credibility of those reports was dependent on the credibility of the information imparted to the doctors by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the appealed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The hearing officer did not err in determining that the claimant has not had disability as a result of the

claimed injury of (alleged date of injury), because without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

We affirm the hearing officer's decision and order.

The true corporate name of insurance carrier 1 is **AMERISURE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CINDY GHALIBAS
7610 STEMMONS FREEWAY
DALLAS, TEXAS 75247.**

The true corporate name of insurance carrier 2 is **INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**EDDIE STAFFORD
1417 WEST MAIN, SUITE 104
CARROLLTON, TEXAS 75006.**

Robert W. Potts
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Edward Vilano
Appeals Judge